

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMY BUHALO	:	CIVIL ACTION
	:	
v.	:	
	:	
POLICE OFFICER JAMES FALLON, JR.;	:	
POLICE OFFICER TIMOTHY CARRE;	:	
CITY OF PHILADELPHIA	:	NO. 03-cv-04727-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 2, 2006

On December 11, 2002, plaintiff was sexually assaulted by two Philadelphia police officers, in the rear seat of their police car. The officers in question, the defendants Timothy Carre and James Fallon, were arrested, prosecuted and sentenced, and have been dismissed from the police force. The issue to be determined, in considering the pending motion for summary judgment filed by the City of Philadelphia, is whether municipal liability can be established. I conclude that it cannot.

The parties have submitted a very extensive evidentiary record. Drawing all inferences in favor of the plaintiff, it can be concluded that, at the time in question, the Police Department of the City of Philadelphia was not very well-run. Many police officers neglected their duties, visited their wives or girlfriends while on duty, misrepresented their activities in official reports, and committed other violations of police procedures, without suffering disciplinary action. But that is a far cry from establishing that the City of Philadelphia had an

official policy or practice of condoning police officers' sexual assaults upon civilians.

The publicity surrounding the arrests and prosecutions of Carre and Fallon prompted several other women to come forward and relate instances of sexual predation by those officers and others, but there is no evidence that City officials were aware of these incidents, or that responsible officials had any inkling that Carre or Fallon were likely to commit sexual assaults.

Under the familiar authority of Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978), municipal liability can be imposed "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury complained of." See also City of Canton v. Harris, 489 U.S. 378 (1989); Reitz v. County of Bucks, 125 F.3d 139 (3d Cir. 1997).

"In the absence of an official proclamation or stated policy, a course of conduct may suffice to warrant the imposition of liability when customary practices of [municipal] officials are so permanent and well-settled as to virtually constitute law." Andrews v. City of Philadelphia, 895 F.2d 1469 (3d Cir. 1990). In my view, no rational jury could conclude that that standard has been established in this case.

For the reasons thus far stated, the City of Philadelphia cannot be held liable, and its motion for summary

judgment must be granted. This ruling does not, of course, affect plaintiff's claims against the offending officers.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMY BUHALO	:	CIVIL ACTION
	:	
v.	:	
	:	
POLICE OFFICER JAMES FALLON, JR.;	:	
POLICE OFFICER TIMOTHY CARRE;	:	
CITY OF PHILADELPHIA	:	NO. 03-cv-04727-JF

ORDER

AND NOW, this 2nd day of November 2006, upon consideration of the Motion for Summary Judgment filed by the defendant City of Philadelphia, and plaintiff's response, IT IS ORDERED:

1. That the motion is GRANTED. Plaintiff's claims against the defendant City of Philadelphia are DISMISSED with prejudice.
2. All other pending motions are DISMISSED as moot.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.